IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5032 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT AUDHYOGIK KAMDAR MAHAMANDAL

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 5032 of 2003

MR TR MISHRA for Petitioner No. 1

MR SAMIR J DAVE for Respondent No. 1

MR SV RAJU for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 08/07/2004

ORAL JUDGEMENT

1.1 The petitioner union by way of this petition is challenging the order dated 4th February, 2003 whereby the authority has decided that the workmen for whom the dispute was raised were not appointed by the management of Air Port Authority of India. Mr. Mishra for the petitioner union submitted that, earlier the petitioner union had filed Special Civil Application . 3167 of 2002 praying for initiating conciliation proceeding and not to discontinue the services of the petitioners. Ultimately said petition came to be dismissed, against which the Letters Patent Appeal was filed, which was also dismissed by the Division Bench.

2.1 Mr. Mishra has contended that the dispute in question has been decided by the Appropriate Government without looking into the facts on record. The main contention of the petitioner union is that there is a bogus and sham arrangement of contract and the work which the workmen have been doing is that of permanent and perennial nature and the contract was bogus and sham, and this issue can be decided only by the judicial/quasi-judicail authority and not by the Government authorities.

2.2 Mr. Mishra for the petitioner has further submitted that the disputed question of facts cannot be decided by the appropriate Government and therefore, the decision of the respondent is arbitrary, discriminatory and against the provisions of the Industrial Disputes Act, 1947 and accordingly Mr. Mishra requested to direct the respondents to refer the issue to the Industrial Tribunal.

2.3 Mr. Mishra in order to buttress his contention has relied upon a decision reported in 1989 LLJ. pg. 558 in the case of TELCO CONVOY DRIVERS MAZDOOR SANGH AND ANOTHER And. STATE OF BIHAR AND OTHERS. And also a decision of this Court in LETTERS PATENT APPEAL NO. 1031 OF 1996 decided on 10th November 2003 in the case of MANUBHAI B MAKWANA Vs. UNION OF INDIA. Wherein it has been held that the Conciliation Officer cannot decide the matter on merits, and in that view of the matter appropriate direction is required to be issued to the respondents.

3.1 In this view of the matter the petition is allowed. The impugned order dated 4th February, 2003 is set aside and the Central Government is directed to reconsider the matter as stated herein above and take an appropriate decision in accordance with law, within two months from the date of receipt of writ of this order.

Rule made absolute to the aforesaid extent. No order as to costs.

Dt: 8-7-2004 (K.S. Jhaveri, J)

/vgn